Appendix O

PIPELINE SAFETY REGULATION AND RESOURCES IN CALIFORNIA

PHMSA's Role

PHMSA is an agency within the U.S. Department of Transportation. PHMSA, through its Office of Pipeline Safety (OPS), administers a national pipeline safety program pursuant to the Pipeline Safety Act (Act).[1] The purpose of the Act is to protect "against risks to life and property posed by pipeline transportation and pipeline facilities."[2] To accomplish this purpose, PHMSA is authorized to prescribe and enforce minimum safety standards against owners and operators of pipeline facilities.[3] PHMSA regulations apply to design, installation, construction, testing, inspection, integrity management, operations, replacement, and maintenance of pipelines, and the qualification of personnel who operate and maintain them.[4] PHMSA's pipeline safety program is funded by an annual user fee assessed against gas transmission, liquefied natural gas (LNG) and hazardous liquid pipeline operators.[5]

PHMSA's broad jurisdiction reaches both interstate and intrastate gas and hazardous liquid pipeline transportation and facilities.[6] However, through a state/federal partnership nearly all states, including California, regulate intrastate gas pipeline facilities through an annual certification program.[7] Under this program, states must have regulatory jurisdiction, adopt and enforce the federal pipeline safety standards, and promote pipeline damage prevention.[8]

State/Federal Partnership

Although PHMSA has jurisdiction over intrastate pipeline facilities, all states except Alaska and Hawaii regulate intrastate gas pipeline facilities through an annual certification program.[9] Fifteen states, including California's OSFM, have certified programs for hazardous liquid pipelines.[10] In

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[1] 49 U.S.C. § 60101 *et seq*. (2006). PHMSA's original authority to regulate natural gas pipeline safety comes from the Natural Gas Pipeline Safety Act of 1968, Pub. L. No. 90-481, 82 Stat. 720, as amended.
[2] *See id.* § 60102(a)(1).
[3] *Id.* §§ 60102(a)(2), 60118, 60120, and 60122.
[4] *Id.* § 60102(a)(2)(B)-(C).
[5] *Id.* U.S.C. § 60301.
[6] 49 U.S.C. § 60101(a).
[7] 49 U.S.C. § 60105 (2006). All states except for Alaska and Hawaii submit annual certifications to regulate intrastate natural gas pipeline facilities.
http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnextoid=60dc8f4826eb9110VgnVCM1000009ed07898RCRD&vgnextchannel=a576ef80708c8110VgnVCM1000009ed07898RCRD&vgnextfmt=print#page1 (last accessed May 2, 2011).
[8] 49 U.S.C. § 60105(b)(1) – (4).
[9] 49 U.S.C. § 60105 (2006).
[10] List of states with intrastate hazardous liquid pipeline safety programs certified to PHMSA under 49 U.S.C. § 60105(a) for Calendar Year 2010.
http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnextoid=60dc8f48

addition to PHMSA regulations, most states also adopt additional, more stringent standards for intrastate facilities.

As long as state certifications comply with the requirements of the Act, PHMSA is precluded from prescribing or enforcing safety standards and practices for intrastate pipeline transportation and facilities.[11] PHMSA may reject a state's certification if it is not "enforcing satisfactorily compliance with applicable" federal standards.[12] Rejection of certification is rare and has only occurred once. In 1993, PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA) decertified Hawaii's state program due to a state budget shortfall that prevented the state from providing adequate technical staff.[13]

State pipeline safety programs share best practices, discuss emerging issues and influence policy through the National Association of Pipeline Safety Representatives (NAPSR).[14] NAPSR holds an annual meeting as well as several regional meetings each year. "State pipeline safety inspectors [comprise] more than 75% of the" pipeline safety inspection workforce.[15]

CPUC Authority

The Utilities Safety and Reliability (USRB) branch of the Consumer Protection and Safety Division (CPSD) of the CPUC regulates and inspects intrastate gas pipeline safety under federal and state authorities and pursuant to an annual program certification to PHMSA. The CPUC's structure, function and authority are set out in the California Constitution.[16] The CPUC derives its authority to regulate gas pipeline safety from the broad powers granted by the California Constitution and Public Utilities Code.[17]

Pursuant to these authorities, the CPUC issued General Order 112-E (GO-112-E) adopting the Federal Pipeline Safety Regulations at 49 C.F.R. Parts 190, 191, 192, 193 and 199.[18] GO-

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26eb9110VgnVCM1000009ed07898RCRD&vgnextchannel=a576ef80708c8110VgnVCM1000009ed07898RCRD&vgnextfmt=print#page2 (last accessed May 2, 2011).

[11] *Id.* § 60105(a).

[12] *Id.* § 60105(f).

[13] Reauthorization of the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act: Hearing before the Subcomm. on Energy and Power of the H. Comm. on Commerce, , Serial No. 106-11, 106th Cong., 114 (Feb. 3, 1999), available at http://www.gpo.gov/fdsys/pkg/CHRG-106hhrg55149/pdf/CHRG-106hhrg55149.pdf (last accessed May 2, 2011).

[14] National Association of Pipeline Safety Representatives, http://www.napsr.org/who_we_are.htm (last accessed May 4, 2011).

[15] *Id.*

[16] CA CONST. art. XII.

[17] CAL. PUB. UTIL. CODE §§ 315 (investigations and reports of accidents), 451 (utilities must furnish safe service and equipment), 702 (utilities must comply with commission orders, decisions, directions or rules), and 761 and 768 (the commission may establish safety standards and issue orders and rules) (2010).

[18] CPUC General Order 112E, § 101 (as amended Aug. 21, 2008). While the CPUC has adopted PHMSA's inspection and enforcement regulations at 49 C.F.R. Part 190, it conducts enforcement pursuant to CPUC

112E provides that all revisions to the federal regulations are incorporated automatically.[19] GO-112E also includes additional requirements that are more stringent than the minimum federal standards. For example, it includes additional reporting requirements for incidents, new construction and changes in MAOP.

The commission also has specific statutory authority to regulate certain propane distribution systems serving multiple customers[20] as well as master-metered natural gas systems in mobile home parks.[21] These laws require the CPUC to conduct inspections of these systems at intervals of five years or less.[22]

PHMSA State Pipeline Safety Program Grants

States can apply to PHMSA for grants of up to 80% of the cost of a state's pipeline safety program. While 80% is allowed by law, appropriations from Congress have limited grant funds below 80%.[23] PHMSA allocates grant funds based on performance, as demonstrated in annual certification filings and through discussions with state program staff.

In 2010, the CPUC received 90.50 points out of 100, which resulted in a PHMSA grant representing 63.70% of the cost of the CPUC's natural gas pipeline safety program.[24] With most state programs scoring in the mid to high 90s, the CPUC received the lowest number of points of any state gas pipeline safety program, aside from Puerto Rico, which received a score of 73.20 points. The 2010 PHMSA scoring document indicates the CPUC lost points because of a lack of state jurisdiction over municipal pipeline operators and for not meeting the recommended number of inspection person days. The PHMSA recommended number of inspection-persons days is 85 days per inspector per year.[25]

DOT uses the grant program to incentivize state responsibility for pipeline safety and to improve the performance of state programs.[26] To allocate grant funds PHMSA reviews and scores the performance of state programs on the basis of 100 total points, half of which come from

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procedures. Given the delegation constraints within the CPUC, and existing CPUC procedural requirements, the CPUC does not employ the enforcement mechanisms set out in Part 190.

[19] *Id*. at § 104

[20] CAL. PUB. UTIL. CODE §§ 4451-4465 (propane systems).

[21] *Id.* §§ 4351-4361 (mobile home parks).

[22] *Id.* §§ 4353 and 4453.

[23] 49 U.S.C. § 60107(a) (2006). The most recent grant data for 2010 indicates maximum funding of approximately 70% of state program budgets. The 2006 amendments to the Pipeline Safety Act authorized an increase in grant funding from 50% to 80% of state program budgets.

[24] PHMSA 2010 Natural gas Scoring Document.

[25] Final Rule, Allocation Formula for State Grants, 58 Fed. Reg. 10985, 10988 (Feb. 23, 1993).

[26] Final Rule, Allocation Formula for State Grants, 56 Fed. Reg. 7636, 7637 (Feb. 25, 1991).

PHMSA's review of the annual certification reports and the other half from discussions and interviews with state staff.[27] PHMSA allocates grant funds considering the following factors:

- Adequacy of state operating practices.
- Quality of state inspections, investigations, and enforcement/compliance actions.
- Adequacy of state recordkeeping.
- Extent of state safety regulatory jurisdiction over pipeline facilities.
- Qualifications of state inspectors.
- Number of state inspection person days.
- State adoption of applicable federal pipeline safety standards.
- Any other factor the PHMSA Administrator deems necessary to measure performance.[28]
- State adoption of a one-call damage prevention program.[29]

Each year, PHMSA notifies state agencies of specific performance criteria in light of the factors listed above, and the weights to be assigned to each.[30]

Training

PHMSA assesses state certifications and allocates grant funds, in part, on the basis of the qualifications of state inspectors.[31] A condition of full PHMSA grant funding is state pipeline safety personnel complete a series of courses offered by PHMSA's Office of Training and Qualifications (TQ). Most courses are offered only at TQs training facility in Oklahoma City, Oklahoma. The annual state certification forms for 2010 list 24 TQ courses that state inspectors must complete within three years of beginning employment.[32] PHMSA offers the courses at no cost to state inspectors. However, state programs must fund inspector travel to the Oklahoma City training facility.

CPUC Enforcement

The CPUC currently takes a four step "graduated" enforcement approach to pipeline safety.[33] The CPUC describes the approach as follows:

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[27] 49 C.F.R. § 198.13(b) (2010).
[28] *Id.* § 198.13(c).
[29] *Id.* §198.35
[30] *Id.* § 198.13(e).
[31] 49 U.S.C. § 60107(d)(1)(C), (2), 49 C.F.R. § 198.13(c)(2).
[32] PHMSA Natural Gas Certification Attachments for 2010, *available at* www.regulations.gov in docket number PHMSA-2009-0304.
[33] CPUC Utility Safety Graduated Enforcement Program(Oct. 2010) (*available at*

- First, the CPSD notifies a utility of possible pipeline safety violations.
- Second, the CPSD investigates the matter and may give the utility a notice of noncompliance and order it to fix the issue within a specified timeframe.
- Third, the CPSD may request the CPUC Commissioners vote to open a formal Order Instituting Investigation, which could result in fines and penalties.
- Fourth, the CPUC staff may request "that the CPUC Commissioners vote to refer the matter for civil or criminal prosecution by" the Attorney General or a local District Attorney.[34]

CPSD may issue informal inspection letters and reports to utilities and request a utility take action to come into compliance.[35] However, except for small penalties for propane distribution systems and master-metered natural gas systems in mobile home parks (MHPs), the CPUC may only issue civil monetary fines and penalties for pipeline safety violations through a formal process called an Order Instituting Investigation (OII).[36] The CPSD may request the Commissioners vote to open an OII, or the Commission may do so on its own initiative. The OII is a formal adjudicatory process that may involve Administrative Law Judges, hearings and other formal proceedings.[37]

CPSD staff has, in the context of propane system enforcement, characterized OII proceedings as "lengthy, resource consuming and expensive proceedings for the Commission as well as for the operators."[38] The OII process has rarely been invoked in pipeline safety cases. The only two recent reported instances are the 2010 and 2011 OII proceedings against PG&E regarding the San Bruno Incident[39] and the 2008 gas distribution system incident in Rancho Cordova.[40] Both proceedings were initiated on the Commission's own motion and remain pending as of the publication of this report. The CPUC makes infrequent use of settlements in the pipeline safety context.

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http://www.cpuc.ca.gov/NR/rdonlyres/B92CC9E9-48DF-4E8D-B8EB-2FBC9CD462A/0/GraduatedEnforcement102010.pdf).

[34] *Id.*

[35] Utilities Safety Reliability Branch, CPUC Gas Pipeline Safety Program GO 112-E Procedures Manual at 13-14 (Aug. 2008).

[36] CPUC Rules of Practice and Procedure, Rule 5.1.

[37] CPUC Rules of Practice and Procedure, Rules 5.1 and 7.1-.6 (2009).

[38] CPUC Resolution USRB-001 at 3 (Jul. 31, 2008).

[39] Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines, I.11.-02-016, 2011 Cal. PUC LEXIS 69 (Feb. 24, 2011).

[40] Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company, Regarding the Gas Explosion and Fire on December 24, 2008 in Rancho Cordova, California, I.10-11-013, 2010 Cal. PUC LEXIS 505 (Nov. 19, 2010).

As noted above, the CPSD does have the ability to issue relatively small penalties and citations with respect to pipeline safety violations on propane distribution systems[41] and master-metered natural gas systems in mobile home parks (MHPs).[42] The CPSD requested and obtained this authority through limited delegations from the Commission.

Generally, the CPUC's delegation of citation authority appears limited, but not precluded, by Commission case law prohibiting the Commission from delegating powers that involve judgment or discretion, absent statutory authorization.[43] Other Commission cases have narrowed this principle to prohibit delegations only of the "power to make fundamental policy decisions or final discretionary decisions."[44] Such narrowing allows agencies to "act in a practical manner and delegate authority to investigate, determine facts, make recommendations, and draft proposed decisions to be adopted or ratified by the agency's highest decision makers, even though such activities in fact require Staff to exercise judgment and discretion."[45] This language suggests that the CPUC has some ability to delegate additional, limited citation authority for other types of pipeline safety violations.

Different Pipeline Safety Enforcement Frameworks: The Federal Model and Other States

States enforce pipeline safety requirements and achieve compliance objectives through a variety of different mechanisms. The PHMSA approach, as well as a sample of state pipeline safety enforcement frameworks, is set out below.

PHMSA

PHMSA conducts a compliance and enforcement program for interstate pipeline facilities nationwide. PHMSA Regional Directors have a large degree of discretion on whether and what type of enforcement action to take, and may initiate administrative enforcement cases and propose civil penalties through an informal process.[46] Operators may contest enforcement cases and request an informal hearing or proceed on the papers.[47] Hearings are typically concluded in a day or less.

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[41] CPUC Resolution USRB-001. Delegates propane gas distribution system citation and fine authority to the CPSD. CPUC's authority to inspect and enforce propane master meter systems is found in CAL. PUB. UTIL. CODE §§ 4451-4465.

[42] CPUC Resolution SU-24 (Dec. 17, 1993). Delegates mobile home park natural gas distribution system citation and fine authority to the CPSD. CPUC's authority to inspect and enforce propane master meter systems is found in CAL. PUB. UTIL. CODE §§ 4351-4361.

[43] *California School Employees Association v. Personnel Commission*, 3 Cal.3d 139, 144 (1970).

[44] *Union Pacific Railway Co.*, Order Modifying Resolution ROSB-002 and Denying Rehearing of Resolution, as Modified, A.08-12-004, 2009 Cal. PUC LEXIS 250, *5 (May 11, 2009).

[45] *Id.* at *6 (quoting *California Ass'n of Competitive Telecomm. Companies*, D02-02-049 (2002) __Cal.P.U.C.2d__ at pp.6-7 (slip. op.).

[46] 49 C.F.R. § 190.207.

[47] *Id.* § 190.209(a)(3), (b)(2).

The PHMSA Associate Administrator (AA) ultimately decides and issues a final order in all cases involving a civil penalty or a compliance order, whether or not a hearing has occurred.[48] Operators may petition the AA for reconsideration of a final order.[49] Beyond the petition stage, appeal is to a District Court of the United States. PHMSA may also refer cases to the Department of Justice for civil or criminal enforcement, though this is somewhat rare.[50] Settlements are infrequent.[51]

PHMSA does not publish any official enforcement policy, though it views enforcement as a "key" part of its oversight mission.[52] The agency issues dozens of civil penalty cases each year and, in recent years, has assessed millions of dollars each year in penalties.[53]

California (Hazardous Liquids)

The Office of the State Fire Marshal (OSFM) regulates intrastate hazardous liquid pipeline safety.[54] Unlike the CPUC's General Public Utilities Code-based Gas Safety Program, the OSFM regulates hazardous liquids pipeline pursuant to specific statutory authority.[55] The OSFM enforcement mechanism is very similar to PHMSAs.[56] The Pipeline Safety Division may initiate and conclude informal enforcement cases on its own, including civil penalty actions, and may settle cases. Operators may request hearings, but they rarely do.

The OSFM has a large degree of flexibility to conduct informal enforcement proceedings and assess civil penalties.

Washington

The Washington Utilities and Transportation Commission (WUTC) regulate intrastate gas and hazardous liquid pipeline safety, according to a specific statutory mandate.[57] WUTC's enforcement policy is to provide technical assistance when an operator is first found to be out of compliance, absent any risk to public safety.[58] Staff may also require an operator to submit a compliance plan.[59] WUTC will consider enforcement actions, including civil penalties, after repeated violations, failure to correct previous violations, for imminent threats and where

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[48] *Id.* § 190.213(a).
[49] *Id.* § 190.215(a).
[50] *Id.* §§ 190.231 and 190.235.
[51] Of several hundred cases initiated since 2002, PHMSA has issued six administrative consent orders. *See* http://primis.phmsa.dot.gov/comm/reports/enforce/Cono_opid_0.html?nocache=6711 (last accessed May 4, 2011).
[52] http://primis.phmsa.dot.gov/comm/EnforcementProgram.htm?nocache=5108 (last accessed May 4, 2011).
[53] PHMSA Index of Final Orders issued: http://primis.phmsa.dot.gov/comm/reports/enforce/FOCP_opid_0.html?nocache=2676 (last accessed May 4, 2011).
[54] CA Office of State Fire Marshal: http://osfm.fire.ca.gov/pipeline/pipeline.php (last accessed May 4, 2011).
[55] CAL. GOV'T. CODE §§ 51010-51019.1 (West 2010).
[56] Cal. Code Regs. tit. 19, §§ 2070-2075 (2011).
[57] WASH. REV. CODE ANN § 81.88 (West 2011).
[58] WUTC Safety and Consumer Protection Division – Compliance and Enforcement Manual at 9.
[59] *Id.* at 51-52.

circumstances otherwise warrant.[60] Staff may also propose relatively small administrative penalties for certain violations.[61] Administrative penalties must be approved by the commission and operators may request mitigation of the penalties or a hearing.[62] Pipeline safety staff may recommend the Commission issue a show cause proceeding or formal complaint including penalties and sanctions.[63]

Commission policy encourages negotiated settlements.[64] Staff may initiate settlement discussions with pipeline operators, and reach negotiated settlements, including civil monetary penalties.[65] The Commission must approve any settlement.[66]

Overall, WUTC pipeline safety staff has a degree of flexibility to pursue enforcement matters and conduct settlement negotiations without initiating formal adjudicatory processes.

Texas

The Railroad Commission of Texas (RRC) regulates intrastate gas and hazardous liquid pipeline safety, according to specific statutory mandates.[67] RRC staff attempt to solve many compliance issues informally, without enforcement actions. When enforcement is necessary, staff may propose enforcement cases and administrative penalties and operators have the opportunity for a hearing.[68] The RRC settles many cases and hearings are relatively rare. More substantial injunctive relief and civil penalties are available if the matter is pursued in court by the attorney general, on behalf of the RRC.[69]

The RRC has flexibility to use a variety of formal and informal means, including settlements, to achieve enforcement and compliance objectives.

Oregon

The Oregon Public Utilities Commission[70] regulates intrastate gas pipeline safety according to its general authority to regulate public utilities, as well as pipeline safety-specific authority.[71] Commission regulations give inspection priority to gas pipeline facilities with greater risk.[72] It is

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[60] *Id.* at 12.
[61] WASH. REV. CODE ANN § 80.04.405 (West 2011).
[62] *Id.*
[63] WUTC Safety and Consumer Protection Division – Compliance and Enforcement Manual at 55-56.
[64] *Id.* at 13.
[65] *Id.*
[66] Wash. Admin. Code § 480-07-750 (2011).
[67] Tex. Util. Code Ann. §121 (West 2010) (gas); Tex. Nat. Res. Code Ann. §117 (West 2010) (hazardous liquids).
[68] Tex. Util. Code Ann. §121.206 - 207.
[69] Tex. Util. Code Ann. §121.203 – 204.
[70] OR Public Utility Commission: http://www.oregon.gov/PUC/safety/index.shtml (last accessed May 4, 2011).
[71] Or. Rev. Stat. § 757.039 (2009).
[72] OR. ADMIN. R. 860-031-0005 (2011).

the policy of the pipeline safety division to resolve compliance issues informally.[73] Staff provides verbal notice of probable violations before concluding inspections.[74] Staff may also issue written notices of probable violation to operators.[75] Operators may request an informal settlement conference to discuss the probable violation and agree on corrective actions.[76] In order to obtain civil penalties, staff must refer probable violations the commission for formal action.[77]

The Commission has not issued any civil penalties for pipeline safety cases in the last ten years.[78] Oregon pipeline safety staff appears to have less enforcement flexibility than other states surveyed.

Minnesota

In Minnesota, the Department of Public Safety (DPS) regulates intrastate gas and hazardous liquid pipeline safety. Within DPS, the Office of Pipeline Safety (MNOPS) administers the pipeline safety program according to specific statutory authorities.[79] It is the policy of MNOPS to initially attempt to resolve compliance issues informally, before resorting to enforcement or penalty actions. MNOPS may initiate and conclude informal enforcement cases on its own, including civil penalty actions.[80] The MNOPS enforcement procedures are substantially similar to PHMSAs. The MNOPS may negotiate settlements of civil penalties[81] and may refer matters for judicial enforcement in state court.[82]

MNOPS has a large degree of flexibility and authority to initiate and conclude enforcement cases.

Virginia

In Virginia, the State Corporation Commission (SCC) regulates intrastate gas and hazardous liquid pipeline safety. The SCC Division of Utility and Railroad Safety regulate pipelines safety according to specific statutory authority.[83] SCC pipeline safety staff may issue informal Notices of Probable Violation and often seek to enter into settlements with pipeline operators. Staff may

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[73] OR. ADMIN. R. 860-031-0010 (2011).
[74] *Id.*
[75] OR. ADMIN. R. 860-031-0015 (2011).
[76] OR. ADMIN. R. 860-031-0020 (2011).
[77] OR. ADMIN. R. 860-031-0030 and 0035 (2011).
[78] PHMSA data on OR PUC enforcement: http://primis.phmsa.dot.gov/comm/reports/stenforce/StateEnfDet_state_OR.html?nocache=2768#_TP_1_tab_2 (last accessed May 4, 2011).
[79] MINN. STAT. §§ 299F.56 – 299F.641; 299J.01 – 299J.18 (2010).
[80] Minn. R. 7530.0100-5060 (2010).
[81] MINN. STAT. § 299F.60 (2010).
[82] MINN. STAT. § 299F.61 (2010).
[83] VA. CODE ANN. §§ 56-553 - 555 (2011) (hazardous liquids); VA. CODE ANN. §§ 56-257.2 (2011) (gas).

negotiate settlements with operators and the Commission makes final determination in choosing to accept, modify, or reject the settlement.[84] Failing informal settlement, the pipeline or SCC staff may invoke formal adjudicatory proceedings before the Commission.

The ability of staff to initiate informal enforcement cases, propose penalties, and engage in settlement negotiations provides the pipeline safety division with significant flexibility.

A figure of enforcement statistics for these states is set out below.

Figure 1 - State Enforcement Statistics

*	CA (gas)	CA (liquids)	OR	WA	TX	MN	VA
Probable Violations	2626	42	207	92	2794	347	281
Probable Violations Corrected	2108	30	239	70	2634	386	172
Compliance Actions	554	13	25	11	632	94	20
Total Penalties Assessed	$3,744	$90,556	$0	$174,000	$84,383	$74,056	$249,864
Total Penalties Collected	$1,733	$40,556	$0	$174,000	$83,050	$35,389	$249,864

*All figures are annual averages for the period from 2001-2009.
Derived from PHMSA data, *available at* http://primis.phmsa.dot.gov/comm/states.htm?nocache=5544 (*last accessed* April 30, 2011)

California One-Call

California's underground facility damage prevention law covers any underground pipeline, conduit, duct, wire or other structure, except non-pressurized sewers and drains.[85] Generally, the law requires excavators to contact a state one-call program at least two days before excavating.[86] If a facility operator receives notification of excavation near its facility, it must

[84] VA. CODE ANN. § 12.1 – 15 (2011).

[85] CAL. GOV'T. CODE §§ 4216-4216.9 (2010).
[86] *Id.* § 4216.2 (2010).

locate and mark the facility within two days of the notification.[87] There is no single entity in California responsible for administering or enforcing state damage prevention laws. Instead, the law allows enforcement by the Attorney General, a district attorney, or the state or local agency that issued any excavation permit.[88] Facility operators and excavators are subject to civil penalties for violations.[89] In addition, excavators can be subject to disciplinary proceedings, including loss of their contractor's license.[90] There are two separate one-call systems in California - Underground Service Alert (Northern) and Dig Alert (Southern).

The California one-call law imposes more stringent line locating requirements for "high priority" underground facilities, including gas pipelines operating at pressures above 60 pounds per square inch.[91] For such facilities, the excavator and facility operator must meet in person at the proposed excavation site.[92]

A recent PHMSA characterization of state damage prevention programs indicates that a key challenge in California is the lack of a single entity for dispute resolution and enforcement.[93] PHMSA also observed a weakness in the "process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities."[94] Proposed state legislation would centralize damage prevention authority in the CPUC, by granting it the authority to adopt and enforce a one-call notification program.[95]

Many state damage prevention programs have exemptions for certain categories of excavators, such as state and municipal excavators and their contractors. Pending federal legislation would require states to eliminate exceptions for state and local excavators as a condition of receiving damage prevention and state program grant funding.[96] PHMSA is also in the midst of a rulemaking process that will result in a procedure where by PHMSA can make a determination that a state damage prevention program is inadequate, and take federal enforcement action in the state.[97]

Aside from state damage prevention requirements, PHMSA's integrity management regulations require pipeline operators to consider the potential for external damage as a threat and take and

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[87] *Id.* § 4216.3 (2010).
[88] *Id.* § 4216.6(b) (2010).
[89] *Id.* § 4216.6(a) (2010).
[90] CAL. Bus. & Prof. CODE § 7110 (2010).
[91] CAL. GOV'T. CODE § 4216.2(a)(2) (2010).
[92] *Id.*
[93] PHMSA summaries of state damage prevention programs: http://primis.phmsa.dot.gov/comm/publications/StateProgramCharacterizationSummaries-20100514.pdf (last accessed May4, 2011).
[94] *Id.*; 49 U.S.C. § 60134(b)(5).
[95] Assemb. B. 56, as amended (Cal. Feb. 23, 2011); S.B. 216, as amended (Cal. Apr. 25, 2011).
[96] Pipeline Transportation Safety Improvement Act of 2011, S.275, 112th Cong. § 3 (referred to Comm. On Commerce Science and Transp. Feb. 3, 2011).
[97] Advanced Notice of Proposed Rulemaking, 74 Fed. Reg. 55,797 (Oct. 29, 2009).

monitor comprehensive additional measures to mitigate the threat.[98] In addition, PHMSA regulations require operators to have a written damage prevention program, a portion of which can be satisfied through participation in state one call programs.[99]

[98] 49 C.F.R. § 192.917(e) (2010).
[99] 49 C.F.R. § 192.614 (2010).